

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**GERALD M HUGHES
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**AMERICAN ORDNANCE LLC
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MIDDLETON IA 52638**

**GERALD M HUGHES
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**Appeal Number: 06A-UI-06068-JTT
OC: 05/21/06 R: 04
Claimant: Appellant (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit
871 IAC 24.26(13) – Claimant Left Before Effective Date of Scheduled Layoff

STATEMENT OF THE CASE:

Gerald Hughes filed a timely appeal from the June 8, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 29, 2006. Claimant participated. Human Resources Manager Chuck Griffin represented the employer and presented additional testimony through Production Supervisor Randy Grisham. Exhibits One through Four were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Gerald Hughes was employed by American Ordnance on a full-time basis from October 3, 2005 until

May 17, 2006, when he left the employment prior to the effective date of a scheduled layoff. When Mr. Hughes arrived for his shift on May 17, Production Supervisor Randy Grisham presented him with a memo from the employer. The memo indicated that Mr. Hughes would be laid off effective May 22, 2006. The memo told Mr. Hughes that May 18 would be his last day of actual work, but that Mr. Hughes would need to appear for an "out briefing" on May 22. Mr. Hughes believed he had other employment to go to effective May 18 at 6:00 a.m. Mr. Hughes told Mr. Grisham that in light of the pending layoff, he would be leaving his work early that evening so that he could be ready to appear at the new employment the next morning. Mr. Hughes did leave the employment at American Ordnance at that point.

Mr. Hughes did not report for the new employment the next morning because he was experiencing pain in his neck and back. At the beginning of May, American Ordnance had changed Mr. Hughes' job responsibilities so that Mr. Hughes was required to perform significant and regular heavy lifting. The change in work responsibilities caused Mr. Hughes to experience pain and discomfort in his back and neck and has caused Mr. Hughes to seek employment that does not require him to lift more than 30 pounds. Mr. Hughes has a two-year college degree in business administration. Prior to working for American Ordnance, Mr. Hughes made his living for 29 years as an owner/operator of roller skating rinks.

REASONING AND CONCLUSIONS OF LAW:

The question is whether Mr. Hughes' separation from the employment at American Ordnance disqualifies him unemployment insurance benefits. It does not.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.26(13) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (13) A claimant who, when told of a scheduled future layoff, leaves employment before the layoff date shall be deemed to be not available for work until the future separation date designated by the employer. After the employer-designated date, the separation shall be considered a layoff.

The evidence in the record establishes that Mr. Hughes left work on May 17, after the employer notified him of a scheduled layoff to take effective May 22. Accordingly, Mr. Hughes is deemed not available for work until May 22. Effective May 22, Mr. Hughes is deemed laid off and is eligible for benefits, provided he is otherwise eligible.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(1)a(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The evidence in the record establishes that Mr. Hughes has been able and available for work since establishing his claim for benefits. Though Mr. Hughes experienced back and neck pain as a result of his final work responsibilities at American Ordnance and elected not to pursue physically taxing work in the concrete industry, the evidence indicates that Mr. Hughes has a management background, a two-year business degree and is able and available for work that would utilize those skills.

DECISION:

The Agency representative's June 8, 2006, reference 01, decision is reversed. The claimant was laid off effective May 22 and is eligible for benefits, provided he is otherwise eligible. The claimant has been able and available for work since establishing his claim for benefits. The employer's account may be charged for benefits paid to the claimant.

jt/cs